

REMARKS

Claims 1-23 stand rejected and will remain pending after entry of this amendment.

Amendment of the Claims

In applicants amendment dated September 27, 2005 claim 14 instead of claim 15 was amended in response to the objection that claim 15 improperly depended from claim 12. The present amendment reverses the amendment of claim 14 and properly amends claim 15 to depend from claim 14. This amendment to correct claim form is proper after the final Office Action.

Rejection Under 35 U.S.C. §112

Claims 21-23 were rejected under the first paragraph of 35 U.S.C. §112 as failing to comply with the written description requirement. The rejection contends that the recitation in the claims that the torso of the person is unrestrained by the hip control apparatus is not recited in the application as originally filed.

It is respectfully submitted that the application contains a complete and sufficient written description to support the subject matter in these claims. The patent application specifies that the invention relates to supports for the hip of a person seated in the wheelchair shown in Figure 1. The components of that support are described in paragraph 22 as engaging and supporting the pelvic region of the wheelchair occupant. Because the devices are located immediately above the seat 19 on both sides of the wheelchair, and because they are adapted only to engage the hips, i.e. the pelvic area, of the user. Figure 1 in the application shows the supports 30 and 34 so low as to not abut the torso of a person seated

in the wheelchair. Thus it is clear from the application as filed that the supports do not confine the torso of the user.

The Office Action has mischaracterized the cited passage on page 6, lines 1-3 of the application and incorrectly states that the hip supports can be tilted to restrain the torso. That passage states that the bracket is attached to the wheelchair in a way that enables “the bracket to be pivoted so that the second hip support 34 can tilt up or down to accommodate the torso of the wheelchair user.” Thus the pads can be moved vertically so as to properly engage the hips or pelvic region of the user depending upon that person’s torso height. The patent does not mention any engagement of the hip supports with the user’s torso and the accommodating the torso of the wheelchair user does not imply such engagement.

As a consequence, the written description of the invention in the present application in conjunction with the drawings clearly support the subject matter recited in claims 21-23. Therefore those claims are in full compliance with the requirements of the first paragraph of 35 U.S.C. §112.

Rejection Under 35 U.S.C. §102

Claims 1-3, 5, 6, 10, 11, 21 and 22 have been rejected under 35 U.S.C. §102 as anticipated by Warburton.

That patent describes a wheelchair support for patients that are incapable of sitting upright, such as paraplegics who have such weak torso muscles that they slump over in a conventional chair. The patent notes that a waist belt is inadequate to properly support such people (column 1, lines 8-34). To support paraplegics, this patent’s device has a fastening strap 22 that extends higher up, across the abdomen of the chair occupant.

Therefore, this torso support apparatus does not anticipate the basic structure of the hip support apparatus defined in independent claims 1 and 5 in which a seat belt extends between the two padded hip supports and is secured across the lap of the individual to support that person's pelvic area.

The second full paragraph in section 11 of the Office Action improperly discounts this significant patentable distinction as supposedly being a recitation of an intended use of the claimed invention. However, this claim language provides a structural limitation to the seat belt by defining the relative location for the hip control apparatus of the wheelchair. It specifies that the seat belt segments must be so positioned as to extend across the lap of the person, thereby defining their relative position. Accepting this reasoning of the rejection, renders a seat belt indistinguishable from a head restraint or a leg restraint as those term also would related to an intend use, thus such reasoning is unfounded. The propriety claim limitations based on the relationship between structural elements of a support apparatus and the persons being supported is demonstrated by claim 1 of all the Warburton, Klearman, *et al.*, and Keropian patents relied upon in the Office Action.

The further statement that Warburton is capable of supporting the hips of the user that is above average height also is incorrect. Warburton clearly teaches that its support apparatus 10 is to be worn about the torso of the user regardless of the user's height and provides adjustable straps 26 and 28 to raise the apparatus to accommodate people of different heights. Nothing suggests how that torso support apparatus could be employed to support the hips of the chair occupant. In fact the flexible side cushions 16 and 18 must wrap around the torso of the user, which prevents them from confining the pelvic area.

Therefore, the subject matter of independent claims 1 and 5 is not taught by the Warburton apparatus.

In addition, various dependent claims are not anticipated by the Warburton patent. Specifically, claim 2 states that each padded hip support comprises a bracket for coupling the hip control apparatus to the wheelchair. Instead, the Warburton has a pair of adjustable straps 26 and 28 that wrap around part of the chair. Furthermore, the device in this prior patent does not have a main portion for abutting the pelvic region of a person as in claim 6.

Claims 21 and 22, which specifically state that the hip control apparatus is such that the torso of the person is unrestrained, are not anticipated by the Warburton device directed specifically to restraining a person's torso.

For these reasons, claims 1-3, 5, 6, 10, 11, 21 and 22 are not anticipated.

Rejection Under 35 U.S.C. §103

Claims 12, 13, 18, and 23 have been rejected under 35 U.S.C. §103 as being unpatentable over Warburton in view of Klearman, *et al.* This rejection contends that the belt 22 of Warburton extends across the lap of the user, although not in direct contact with the lap (Office Action section 11, third paragraph).

The belt in Warburton extends across the upper abdomen adjacent the diaphragm of the person seated in the chair and Klearman, *et al.* straps cross the person's chest. Although those fasteners extend above the person's lap, that is not the same as extending across the lap. The customary dictionary definition of the preposition "across" is "from one side to the opposite side of", in this case a person's lap, see *Mirriam Webster's Collegiate Dictionary - Tenth Edition*, Mirriam Webster Inc., 1994, p.11 (copy enclosed). Thus a belt that extends

from one side of the upper abdomen or chest to that other side of the upper abdomen or chest does not extend across the lap of that person. Otherwise to accept the rejection's reasoning would mean that the chest straps 66 and 68 in the Klearman, *et al.* device also extend across the person's shoulders and head, something that a skilled artisan would consider absurd. Clearly, the rejection is unreasonably interpreting the claimed phrase that the two segments of seat belt are fastened across the lap of the person.

In addition to the distinction with respect to the seat belt, neither the Warburton device nor the Klearman, *et al.* apparatus has a pair of hip supports, each of which having an adjustable bracket for coupling to the seat back or frame of a wheelchair. Both of these older devices utilize flexible straps to secure their support devices and thus do not utilize brackets, as that term is used in the art.

Furthermore, claim 12 recites a plate structure that extends through the main portion and through the arm of each of the first and second hip supports. Although the Klearman, *et al.* device has a support panel 52, that component extends within the main portion of its constraint member and thus, does not extend through arms. The Warburton device describes a flexible fabric and foam torso support apparatus that does not have any such plate. Therefore, even if it were obvious to combine the plate of Klearman, *et al.* with the Warburton device, nothing in the combined teachings of these references would motivate a skilled artisan to extend the plate through the arm portion, which both patents teach as requiring flexibility so as to be secured across the user's torso. Therefore, the combination of the references falls short of motivating a skilled artisan to the extend that it would be obvious to extend the plate structure through the arm of a hip support as stated in pending claim 12.

The dismissal in the final Office Action (first full paragraph on page 9) of Applicant's prior argument on the basis that one cannot show nonobvious by attacking the references individually is totally misplaced. Since the Warburton patent does not teach any support plate, the motivation for providing one must come solely from Klearman, *et al.* In fact, the Warburton patent expressly teaches the need for an extremely flexible restraint system, thereby teaching away from using a support plate. Therefore applicant only needs to attack the Klearman, *et al.* reference on this issue.

With respect to claim 23, both the Warburton and the Klearman, *et al.* devices are specifically directed to supporting the upper torso of a person who cannot otherwise sit erect in a chair. These devices both include straps that constrain the chest area of the user and thus, do not suggest an apparatus that does not restrain a person's torso.

As a consequence of these significant distinctions, claims 12-13, 18, and 23 are not rendered obvious under 35 U.S.C. §103 by the two cited patents.

Claims 4, 7-9, 14-15, and 19-20 stand rejected under 35 U.S.C. §103 as being unpatentable over Warburton in view of Klearman, *et al.* and in view of Keropian.

As noted previously, neither Warburton or Klearman, *et al.* teaches an apparatus with padded hip supports and a seat belt that secures those supports by extending across the lap of a person seated in the wheelchair. Both of those patents teach a securing device that extends either across the upper abdomen or the chest of the person. The same is true of the Keropian apparatus in which the seat belt 22 extends across the upper part of the abdomen of the user and thus, also confines the person's torso as opposed to her pelvic area. Therefore, even if the teachings of all three patents were combined, there still would

not be a suggestion to a skilled artisan of providing a hip support with a seat belt that extends across the lap of a person.

Furthermore, claims 4 and 7-9 state that each hip support has a resiliently flexible primary plate extending through both the main portion and the flexible arm. A secondary plate is in the main portion “thereby rendering the main portion less flexible than the respective one of the first flexible arm and the second flexible arm” (claims 4 and 7). None of the references discloses such multiple plates and thus their combination would not suggest that structure. In particular Keropian has just a rectangular side support and nothing close to a primary plate extending through both a main portion and a flexible arm. Therefore, combining the teaching in the references at best would result in separate plates being placed in the three sections 16, 18 and 20 of the support shown in Figure 3 in the Warburton patent. But that would not have the claimed primary plate in a main portion and a flexible arm of the support and another secondary plate in the main portion. Furthermore, such a combination of the patent teachings fails to suggest the arrangement of primary and secondary plates that renders the main portion less flexible than the arms. In fact, the patents suggest just the opposite, arms that are more flexible to wrap in front of a torso.

Claims 14-15 and 19-20 are patentable as reciting the fundamental structure in claim 12 from which they depend. In addition, claims 19-20 specify that each support has a flexible primary and secondary plate that cooperate to provide regions of different flexibility. Nothing in the combined teachings of the cited references suggests the use of primary and secondary plates with this functionality.

Therefore, even when the combination of the teachings of the three references is considered, nothing suggests the unique structure in claims 4, 7-19, 14-15, and 19-20.

Claim 16 was rejected under 35 U.S.C. §103 as being unpatentable over Warburton in view of Klearman, *et al.* and further in view of Allum.

Allum, like the other two patents, teaches a chair restraint system that extends across torso of a child seated in the chair. As a consequence, even when Allum is combined with the other two patents, nothing suggests the hip support recited in parent claim 12 that abuts the person's hips and has a seatbelt that extends across the lap of the seat occupant. Therefore, while it might be obvious to substitute the torso belt structure of Allum on the torso confining devices of Warburton and Klearman, *et al.*, that still would not suggest the hip control apparatus recited in claim 16.

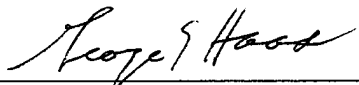
Claim 17 was rejected under 35 U.S.C. §103 as being unpatentable over Warburton in view of Klearman, *et al.*, and further in view of Hammersburg. As with the other patented devices, Hammersburg teaches a torso support apparatus having pads that fit under the armpits of the wheelchair occupant, but which do not extend significantly below the arms of the wheelchair, and thus do not support or abut the hips of the occupant. The fastening belt 150 also extends across the torso of the person rather than his or her lap. Note that this structure is to be utilized with a conventional wheelchair having a frame with rigid vertical panels on opposite sides of the seat which provide hip support. However, those panels do not structurally correspond to the claimed hip supports. Thus, the addition of the third reference does not cure the deficiency in the other patents with respect to the fundamental structure of the hip control apparatus recited in parent claim 12.

Conclusion

In view of these distinctions between the subject matter of the present claims and teachings of the cited patents, reconsideration and allowance of the present application are requested.

Respectfully submitted,
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